

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

REGINALD MILSTEAD	§	
v.	§	CIVIL ACTION NO. 5:03cv168
SUZANNE HASTINGS, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Reginald Milstead, proceeding *pro se*, filed this lawsuit under the Federal Tort Claims Act and Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) complaining of alleged violations of his legal rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Milstead's complaint concerns the medical care he received after injuring his finger while confined at the federal prison in Texarkana. The Magistrate Judge ordered the Defendants to answer the lawsuit and motions to dismiss Milstead's claims were filed. On May 12, 2005, the Magistrate Judge issued a Report recommending that the motion to dismiss the Bivens claim be granted and that the Plaintiff's claims under the Federal Tort Claims Act be dismissed as frivolous and, in part, for failure to exhaust administrative remedies. Milstead received a copy of the Magistrate Judge's Report on May 17, 2005, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge and has determined that this Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the Court. It is further

ORDERED that the Defendant's motion to dismiss the Plaintiff's Bivens claim is GRANTED and that this claim is hereby DISMISSED with prejudice. It is further

ORDERED that the Plaintiff's claims under the Federal Tort Claims Act are hereby DISMISSED with prejudice as frivolous and, as for all Tort Claims Act claims except for the denial of physical therapy, such claims are DISMISSED with prejudice for failure to exhaust administrative remedies. Finally, it is

ORDERED that any and all motions which may be pending in this cause are hereby DENIED.

**SIGNED this 11th day of July, 2005.**

A handwritten signature in black ink, appearing to read "David Folsom", written over a horizontal line.

DAVID FOLSOM  
UNITED STATES DISTRICT JUDGE